

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

EON CORP. HOLDINGS, LLC,

Plaintiff,

v.

SENSUS USA INC. ET AL.,

Defendants.

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Civil Action No. 6:09-CV-116

JURY TRIAL REQUESTED

**SENSUS USA INC.'S MOTION FOR SUMMARY JUDGMENT OF  
NONINFRINGEMENT FOR ONE-WAY AND TWO-WAY WATER AND GAS  
FLEXNET SYSTEMS**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. STATEMENT OF ISSUES TO BE DECIDED ..... 1

III. STATEMENT OF UNDISPUTED MATERIAL FACTS ..... 2

IV. SUMMARY JUDGMENT STANDARD..... 4

V. ARGUMENT ..... 5

VI. CONCLUSION..... 6

## **I. INTRODUCTION**

Sensus moves for summary judgment of noninfringement of claims 1 and 9 of U.S. Patent No. 5,388,101 (Ex. 1) and claims 1–3, 5, 7–8, and 12–14 of U.S. Patent No. 5,481,546 (Ex. 2) by the Sensus FlexNet One-Way and Two-Way Water and Gas Systems. All of these asserted claims require data messages to be transmitted to the subscriber units.<sup>1</sup> It is undisputed, however, that FlexNet data messages cannot be transmitted to the accused Sensus one-way water and gas meters (the alleged subscriber units). Further, all of the asserted claims require a “remote receiver”<sup>2</sup> that receives messages transmitted by subscriber units. EON alleges the “buddy mode” feature of each of the three accused FlexNet systems satisfies these limitations.<sup>3</sup> However, it is undisputed that Sensus’ FlexNet two-way water and gas systems do not use “buddy mode.” Indeed, EON’s expert Dr. Bims has not provided any opinions or analysis showing how Sensus’ one-way and two-way water and gas FlexNet systems satisfy these limitations. Therefore, summary judgment of noninfringement should be granted for the Sensus FlexNet One-Way and Two-Way Water and Gas Systems.

## **II. STATEMENT OF ISSUES TO BE DECIDED**

1. Could a reasonable jury find that the Sensus FlexNet one-way water and gas meters satisfy the limitation requiring data messages to be transmitted to the subscriber units?
2. Could a reasonable jury find that the Sensus FlexNet two-way water and gas systems, which do not use “buddy mode,” satisfy the remote receiver limitations?

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<sup>1</sup> Each asserted claim, although worded slightly different, requires two-way communication with subscriber units; that is, the claimed subscriber units must both transmit messages to and receive messages from the system. *See* ’101 patent at 11:33–37; ’546 patent at 10:65–11:4, 11:37–40, 14:5–14.

<sup>2</sup> In this motion, the “remote receiver” limitation refers to “local remote receiver,” “receive only digital receiver,” “base station reception means,” and “reception means,” which, as explained *infra*, all refer to a remote receiver.

<sup>3</sup> There are three different FlexNet systems that are at issue in this case: (1) Two-Way Electric Systems; (2) One-Way Water and Gas Systems; and (3) Two-Way Water and Gas Systems. *See* Sensus’ Motion for Partial Summary Judgment, Dkt. No. 272, at 3.

### III. STATEMENT OF UNDISPUTED MATERIAL FACTS

#### A. THE ASSERTED CLAIMS

EON has accused Sensus' Two-Way Electric, One-Way and Two-Way Water and Gas FlexNet Systems of infringing claims 1 and 9 of U.S. Patent No. 5,388,101 and claims 1–3, 5, 7–8, and 12–14 of U.S. Patent No. 5,481,546. All of these claims recite *transmitting messages to a subscriber unit*, and also require a *“remote receiver”* or *“remotely located reception station”* that receives data messages from a subscriber unit. The relevant claim limitations include:

'101 patent claim 1: “[B]ase station data processing facilities and transmission facilities for *transmitting to a set of local subscriber units* and receiving from a subset of those local subscriber units ... digital data messages ... with *remotely located reception stations*,” and *“base station reception means* for receiving and processing data messages from the set of local subscriber unit at that base station ... .” (Ex. 1, at 11:33–34 and 40–42.)

'546 patent claim 1: “[L]ocal base station repeater cell means ... further comprising base station data processing and transmission means for *transmitting to a set of said local subscriber units* ... data messages” and “reception means for receiving and processing data messages from said set of local subscriber units comprising *a local remote receiver* ... each local remote receiver adapted for receiving-only low power digital messages transmitted from said local subscriber units within range of said local remote receiver.” (Ex. 2, at 10:60–66 and 11:8–18).

'546 patent claim 2: “[B]ase station repeater cell means ... further comprising ... data processing and transmission means for *transmitting to ... at least one of said plurality of said subscriber units* ... data messages ...” and *“reception means* for receiving and processing ... data messages from at least one of said plurality of subscriber units and relaying said ... data messages from at least one of said plurality of subscriber units to said base station repeater cell means.” (Ex. 2, at 11:31–40 and 44–49).

'546 patent claim 14: “[A] plurality of subscriber units ...” and “a set of *receive only digital receivers* ... each said digital receiver being coupled by a transmission link with the cell site communication system to relay received digital communications ...,” *“said subscriber units ... having ... a receiver for reception of digital messages* from said cell site digital transmitter.” (Ex. 2, at 13:14 and 14:2–15).

During claim construction, the Court construed “remote receiver” as “a receiver remote from or collocated with a transmitter, base station, and/or repeater,” and “receive only digital receiver” as “a receiver for receiving and relaying digital communications.” [Dkt. No. 205, at 40–41.] The Court also construed “base station reception means” and “reception means” in '101

patent claim 1 and '546 patent claim 2, respectively, to require a “remote receiver 20A...20N” as disclosed by the patent specification. [Dkt. No. 205, at 26–27.]

## **B. THE ACCUSED SENSUS FLEXNET SYSTEMS AND EON'S INFRINGEMENT THEORIES**

EON's infringement expert Dr. Bims has opined that Sensus' “FlexNet AMI Networks” infringe '101 patent claims 1 and 9 and '546 patent claims 1–3, 5, 7–8, and 12–14. (Bims Report, Ex. 3, ¶¶ 4, 302). Specifically, Dr. Bims opined that Sensus Meters are allegedly-infringing “subscriber units” that transmit and receive data messages via the Sensus FlexNet system. (Bims Report, Ex. 3, ¶ 91 ('101 patent claim 1); ¶ 173 ('546 patent claim 1); ¶ 245 ('546 patent claim 2); ¶ 321 ('546 patent claim 14)). However, there are three different Sensus “FlexNet AMI Networks” at issue in this case: (i) “Two-Way” Electric Systems; (ii) “One-Way” Water and Gas Systems; and (iii) “Two-Way” Water and Gas Systems.<sup>4</sup> Thus, any infringement analysis requires showing that the limitations of the asserted claims are satisfied by each of the systems. For One-Way Water and Gas Systems, it is undisputed that Sensus one-way water and gas meters only have a transmitter for sending data messages to the FlexNet network; they do not have a receiver and cannot receive messages from the FlexNet network—hence making them “one-way” meters. (Pinney 30(b)(6) Dep., Ex. 4, at 127:10–16; Wicker Rebuttal Report, Ex. 5, at 54.)<sup>5</sup>

EON's expert Dr. Bims has opined that the “buddy mode” feature of Sensus FlexNet Systems meet the “remote receiver” and “remotely located reception station” limitations. (Bims Report, Ex. 3, ¶¶ 143–46, 150–54 ('101 patent claim 1); ¶¶ 194, 200–01, 206–14 ('546 patent claim 1); ¶¶ 262–65 ('546 patent claim 2); ¶¶ 314–18 ('546 patent claim 14)). Again, Dr. Bims opined generically on “Sensus AMI Networks.” However, Two-Way Water and Gas FlexNet

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<sup>4</sup> There is no “Sensus AMI Network” or “Sensus FlexNet System” that uses two-way electric meters, one-way water and gas meters and two-way water and gas meters. (Wicker Rebuttal Report, Ex. 5, at 19–20; Pinney 30(b)(6) Dep., Ex. 4, at 18:17–19:14).

<sup>5</sup> EON has been on notice that Sensus' one-way water and gas meters do not receive messages from the FlexNet network at least as early as December 2, 2009. See Dkt. No. 90 (Sensus Motion for Protective Order) and Ex. 1 to Dkt. No. 111 (Declaration of D. Pinney regarding nature of one-way gas and water meters).

Systems cannot use “buddy mode.” Sensus’ 30(b)(6) witness Mr. Pinney testified directly on this issue:

Q. Gas one-way and gas two-way; is that what you're saying?

A. You would never use a Buddy in gas two-way.

Q. Okay. You only use it in one-way?

A. Correct.

Q. And the same is true with water?

A. Correct.

...

Q. Why is it that you would have Buddy Mode in one-way only and not in two-way?

A. It's not that we wouldn't like to have it. It's that we can't have it without a major modification.

...

Q. Okay. Does the two-way water network differ with respect to its infrastructure from the two-way electric?

...

Q. What's different?

A. Well, the two-way electric can take advantage of Buddies and two-way water can't.

(Pinney 30(b)(6) Dep., Ex. 4, at 28:18–24; 60:17–20; 102:9–17.)<sup>6</sup> Sensus’ expert Dr. Wicker confirmed Mr. Pinney’s statements, opining that Sensus’ two-way water and gas systems do not use “buddy mode.” (Wicker Rebuttal Report, Ex. 5, at 14).

#### **IV. SUMMARY JUDGMENT STANDARD**

Sensus incorporates by reference the summary judgment standard set forth in its Motion for Partial Summary Judgment of Noninfringement for the Accused FlexNet Electric and One-Way Water and Gas Systems filed on November 24, 2010.<sup>7</sup>

<sup>6</sup> Mr. Pinney explained that the reason “buddy mode” is not used in two-way water and gas systems is it does not provide for accurate enough timing for the system to operate properly. (Pinney Dep. at 18:17–19:14, 60:17–61:1).

<sup>7</sup> Dkt. No. 272, at 5–7.

## V. ARGUMENT

### A. **THE SENSUS FLEXNET ONE-WAY WATER AND SYSTEMS DO NOT INFRINGE BECAUSE THEIR ONE-WAY METERS DO NOT RECEIVE FLEXNET MESSAGES**

It is undisputed that Sensus' one-way water and gas meters do not have radio receivers for receiving messages, and messages are not transmitted to these one-way devices. Because the claims require an infringing system to transmit data messages to a subscriber unit, none of the Sensus One-Way Water and Gas FlexNet Systems infringes the asserted claims. EON's expert Dr. Bims did not provide any opinions or analysis showing that One-Way Water and Gas Systems satisfy these limitations, nor does he rebut the testimony of Sensus' 30(b)(6) witness Mr. Pinney and its expert Dr. Wicker that the one-way water and gas meters do not receive FlexNet messages. Because the one-way water and gas meters do not have a receiver, it is *impossible* to transmit messages to them or for them to receive messages. (Wicker Rebuttal Report, Ex. 5, at 16, 54). Accordingly, there is no infringement by the Sensus FlexNet One-Way Water and Gas Systems. *See Southwall Techs., Inc.*, 54 F.3d at 1575; *E-Pass Techs., Inc. v. 3Com Corp.*, 473 F.3d 1213, 1222 (Fed. Cir. 2007).

### B. **THE SENSUS FLEXNET TWO-WAY WATER AND GAS SYSTEMS DO NOT INFRINGE BECAUSE THEY DO NOT USE "BUDDY MODE"**

It is also undisputed that the accused FlexNet two-way water and gas systems do not use "buddy mode," which is the feature that allegedly satisfies the "remote receiver" and "remotely located reception station" limitations.<sup>8</sup> Dr. Bims failed to opine that Sensus' two-way water and gas FlexNet systems support "buddy mode" or otherwise meet the "remote receiver" and "remotely located reception station" limitations in the asserted claims, and made no effort to rebut Mr. Pinney's testimony that two-way water and gas FlexNet systems cannot and do not use "buddy mode." (Pinney 30(b)(6) Dep., Ex. 4, at 126:24–127:16). Because of the specific timing constraints for message transmission a two-way water or gas FlexNet system, two-way water and

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<sup>8</sup> Dr. Bims has identified Sensus FlexNet Portals (FNPs) and "Sensus Meters in Buddy mode" as allegedly meeting the remote receiver limitations for the "FlexNet AMI Networks." (Bims Opening Report, Ex. 3, ¶¶ 142–3, 150–54 200–01, 207–214, 262–65, 314–18). Both FNPs and Buddy meters are buddy mode devices. (Sanderford Dep., Ex. 6, at 142:16–143:1; 146:7–15).

gas meters cannot relay messages using “buddy mode.” (*Id.* at 60:17–61:1). Sensus’ expert Dr. Wicker has confirmed that Sensus two-way water and gas systems do not use buddy mode and do not infringe. (Wicker Rebuttal Report, Ex. 5, at 14, 53). Dr. Wicker’s expert opinion and Mr. Pinney’s testimony stand unrebutted by Dr. Bims, who failed to offer any specific opinions on or analysis showing that Sensus’ two-way water and gas systems use “buddy mode,” despite being on notice of Mr. Pinney’s testimony and having reviewed that testimony for his report.<sup>9</sup> As a result, it is undisputed that Sensus’ two-way water and gas FlexNet systems do not use “buddy mode” or satisfy the “remote receiver” or “remotely located reception station” claim limitations, and there is no infringement by these systems. *See Southwall Techs., Inc.*, 54 F.3d at 1575; *E-Pass Techs., Inc.*, 473 F.3d at 1222.

## **VI. CONCLUSION**

Sensus’ one-way water and gas meters cannot receive FlexNet messages as required by all of the asserted claims, and Sensus’ two-way water and gas systems do not use “buddy mode.” As a result, there is no infringement of ’101 patent claims 1 and 9 or ’546 patent claims 1–3, 5, 7–8, and 12–14 by Sensus’ One-Way or Two-Way Water and Gas Systems, and summary judgment of noninfringement should be granted for these systems.

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<sup>9</sup> Dr. Bims cited Mr. Pinney’s testimony when opining that two-way water and gas meters met other claim limitations, such as variable length data messages. (Bims Opening Report, Ex. 3, ¶¶ 142, 160, 193, 219, 258, 273). But Dr. Bims made no effort to address or rebut Mr. Pinney’s adverse testimony that two-way water and gas systems do not use “buddy mode.”



November 29, 2010

Respectfully submitted,

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ATTORNEYS FOR SENSUS USA INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed via CM/ECF and was served upon all counsel of record via CM/ECF on November 29, 2010.

/s/ Hilda Galvan

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